75-6145

Supreme Court, U. S.
FILED
MAR 17 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

_____ Term, 1976

No. 76

ROBERT L. GRIFFIN,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO REVIEW A DECISION OF THE SUPREME COURT OF NORTH CAROLINA

RUFUS L. EDMISTEN
Attorney General
State of North Carolina

EDWIN M. SPEAS, JR.
Special Deputy Attorney General

ELIZABETH C. BUNTING
Associate Attorney General

Justice Building
P. O. Box 629
Raleigh, North Carolina 27602
Telephone: (919) 829-7387

INDEX

Citations to Opinion Below..... 1

Jurisdiction..... 1

Question Presented..... 1

Constitutional and Statutory Provisions Involved..... 2

Statement of the Case..... 2

Statement of the Facts..... 2

Argument..... 5

Conclusion..... 7

TABLE OF CASES

Brady v. United States, 397 US 742 (1970)..... 6

Furman v. Georgia, 408 US 238 (1972)..... 5

Newman v. United States, 382 F 2d 479 (DC Cir 1967)..... 5

Oyler v. Boles, 368 US 448 (1962)..... 5

State v. Fowler, 285 NC 90, 203 SE 2d 803 (1974)..... 6, 7

State v. Jarrette, 284 NC 625, 202 SE 2d 721 (1974)..... 6

State v. Woodson and Waxton, 287 NC 578, 215 SE 2d 607 (1975)..... 6

IN THE

SUPREME COURT OF THE UNITED STATES

_____ Term, 1976

No. _____

ROBERT L. GRIFFIN,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI
TO REVIEW A DECISION OF THE SUPREME COURT OF NORTH CAROLINA

Petitioner raises this Writ of Certiorari to review the judgment of the Supreme Court of North Carolina entered on November 5, 1975.

CITATIONS TO OPINION BELOW

The Opinion of the Supreme Court of North Carolina is reported at 288 NC 437, 219 SE 2d 48 (1975), and is appended to Petitioner's Petition as Appendix A at pages 1a - 9a of his brief.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether the imposition and carrying out of the sentence of death for the crime of murder under the laws of the State of North Carolina violates the Eighth and Fourteenth Amendment to the Constitution of the United States?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Eighth and Fourteenth Amendments to the Constitution of the United States.

2. This case also involves North Carolina General Statutes §§ 14-17, 14-87, 15-176.3, 15-176.4, 15-176.5, 15-187 and 15-188.

STATEMENT OF THE CASE

Petitioner Robert L. Griffin was tried and convicted of first degree murder on 24 March 1975 in the Superior Court of Jones County, North Carolina. Petitioner was sentenced to die under North Carolina General Statutes 14-17. Upon appeal to the North Carolina Supreme Court, that court affirmed petitioner's conviction and death sentence in an Opinion filed November 5, 1975. Petitioner now seeks review in this Court upon Petition for Writ of Certiorari to review the judgment of the Supreme Court of North Carolina.

STATEMENT OF THE FACTS

Clayton Jones was a cab driver for the Veterans Deluxe Cab Company of Jacksonville, North Carolina. On 26 November 1974, the cab driven by Jones was a 1972 gold Impala with a taxi light on the roof. Jones was on duty around 9:00 p.m. on 26 November in the area of the Jacksonville Bus Station.

Down Highway 258 from Jacksonville, there is a place known as Hargett's Crossroads. About 10:45 p.m. on 26 November, two men were trying to start a truck at the crossroads when they heard gunshot blasts. Earlier, they had seen a taxi parked on the side of the road and the shots they heard came from the direction of the taxi. The two men got into a car and drove towards the spot. They saw the taxi pull onto the road, moving away from them towards Kinston and they decided to follow it. They followed the taxi for about two miles, got the license number and noticed that there was one person in the car. They also realized that the taxi was running at a fairly show speed, 45 or 50 m.p.h. The two men then returned to the spot near the crossroads and were

told that someone had been hurt. They then notified the sheriff as to the movements and license number of the taxi. (Rpp. 15, 17-18)

Rescue workers found the body of Clayton Jones on the side of the road where the taxi had been. Medical reports showed that one of three bullet wounds caused death. The fatal bullet had an entry point through the throat while another bullet entered at the back of the head. The third entered and exited Jones' right wrist. (Rpp. 19, 22) A .25 caliber pistol was found in Jones' windbreaker. (Rp. 20) Meanwhile, sheriff's deputies, with the license number of the taxi in hand, headed towards Kinston in search of it. The taxi was spotted six miles from Kinston being driven at a normal rate of speed. It pulled over when the officers flashed their blue light. Defendant was driving. A .22 caliber pistol was found under the front seat. The gun was loaded: four live rounds and two empty shells. (Rpp. 22, 24-25)

Defendant told the officers that he was a cab driver and that he knew nothing of the incident at Hargett's Crossroads. He was warned of his rights and he said he understood them. To the officers defendant appeared rational. He did not seem to be intoxicated or under the influence of drugs. (Rpp. 25, 29)

Early the next morning, SBI agents arrived at the Jones County Sheriff's Department and questioned defendant. He was given the Miranda warnings again and read and signed a written waiver of his rights. He told the agents that he was a cab driver and gave them a cab company name. When agents checked out these statements, they proved to be false. Defendant was again warned of his rights and the questioning continued. At this time, defendant told the officers of a series of events. His statement is quoted below:

> "I (the defendant) left Camp Lejeune at 9:20 p.m. on Tuesday on my way to Kinston but I missed the bus and got into a cab at Camp Lejeune to go to Jacksonville; that there I got into another cab going to Kinston and about seven miles from Kinston asked the cab driver to stop so I could relieve some tension; that he stopped and I pulled out a .22 caliber pistol and told him to get out of the cab and walk down the road; as he was walking he turned and ran at me with something in his hand; I told him that I did not want to shoot him if he would just stay clear of me but that I had no choice but to do what I did."

Defendant's own version of those events is somewhat expanded. (Rpp. 43-49) Defendant, a marine, had had a wreck on 25 November and had experienced pain in his back and head. He had been given tranquilizers (Valium) at the base dispensary (Camp Lejeune) on the morning of 26 November, but continued to feel badly throughout the day. He took two more Valium around 8:30 p.m. and then decided to go to Kinston to see his fiancee. He went to Jacksonville in a cab, intending to catch the bus there for Kinston. He missed the bus, however, and wandered around Jacksonville for awhile, stopping once to drink a beer. While in the town, he ran into a man who offered to sell him a .22 pistol for $25.00. Defendant, wanting the pistol for protection, decided to purchase it and then put it in his pants pocket. Defendant walked back to the bus station and hailed a cab. He paid in advance for a ride to Kinston. He climbed in the front seat and the cab headed down Highway 258. After riding for a few miles, defendant felt sick, he asked the cab driver to pull over and got out. He vomited and got back into the cab. As they rode on, the driver talked to defendant, but defendant stated that he could not collect his thoughts. He said he got upset with the driver, pulled the pistol and told the driver to pull over and get out. He told the driver to start walking and defendant began to climb into the driver's side of the taxi. He stated that the driver then turned around and started to come toward defendant with something in his hand. Defendant recalls firing two shots, but does not remember whether the driver fell. He got into the cab and drove on down the highway until he was stopped by police. Defendant insisted that he never intended to shoot or rob anyone.

Several months after the shooting, Clayton Jones' wallet was found on a dirt road off Highway 258, but it could not be determined how long the wallet had been there. (Rpp. 38, 39)

Approximately one week before trial, defendant was examined by Dr. Edward Carr, a psychiatrist. Dr. Carr noted that Valium can occasionally have extreme side effects and that defendant was having such a reaction on the day of Jones' death. (Rpp. 61, 63-64) Dr. Carr then stated that this might have prevented defendant from forming a

plan or intent to kill. (Rp. 66) The psychiatrist also said, however, that defendant probably did know right from wrong on 26 November 1974. (Rp. 67)

Dr. William Taylor, a psychiatrist from Dix Hospital, agreed with Dr. Carr that defendant had known right from wrong. Dr. Taylor, however, disagreed with Dr. Carr on the issue of capability to form an intent. Dr. Taylor was of the opinion that defendant had this ability.

ARGUMENT

THIS COURT SHOULD NOT GRANT CERTIORARI TO CONSIDER WHETHER THE IMPOSITION OF THE DEATH SENTENCE FOR THE CRIME OF MURDER UNDER THE LAW OF NORTH CAROLINA VIOLATES THE EIGHTH OR FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

Petitioner's contentions here seemingly challenge prosecutorial discretion, plea bargaining, jury discretion and executive clemency as unconstitutional practices in our criminal system. No decision of this Court has struck down those practices and some opinions have, in fact, given implied approval to them.

Furman v. Georgia, 408 US 238 (1972), merely struck down jury discretion for sentencing to death or life imprisonment. That case most assuredly did not invalidate the prosecutor's official discretion. Indeed, this Court in Oyler v. Boles, 368 US 448 , 456 (1962) pointed out that mere selectivity in prosecution created no constitutional problems. In Newman v. United States, 382 F 2d 479 (DC Cir 1967), Burger, Circuit Judge (now Chief Justice of the United States Supreme Court) noted that:

> "To say that the United States Attorney must literally treat every offense and every offender alike is to delegate him an impossible task; of course, this concept would negate discretion. Myriad factors can enter into the prosecutor's decision. Two persons may have committed what is precisely the same legal offense but the prosecutor is not compelled by law, duty or tradition to treat them the same as to charges. On the contrary, he is expected to exercise discretion and common sense to the end that if, for example, one is a young first offender and the other older, with a criminal record, or one played a lesser and the other a dominant role, one the instigator and the other a follower, the prosecutor can and should take such factors into account; no court has any jurisdiction to inquire into or review his decision." Id. at 481-482.

See also Brady v. United States, 397 US 742 (1970), where the Court upheld the practice of plea bargaining. In the North Carolina Supreme Court, the questions of prosecutorial and gubernatorial discretion were fully canvassed by Justice Lake in State v. Jarrette, 284 NC 625, 202 SE 2d 721 (197). Respondent urges continued approval of the philosophy there affirming the constitutionality of such defined discretion.

Further, we wish to point out that there is no indication of abuse of prosecutorial discretion in this case. There was not only an abundance of circumstantial evidence pointing to petitioner as the actor in the crime, but there was also a properly obtained confession all of which showed a brutal and senseless murder. There was little evidence of provocation and no evidence that petitioner had ever even known his victim. Surely this was a proper case for a charge of first degree murder.

Petitioner also asserts that the death penalty is unconstitutional because it constitutes cruel and unusual punishment. He likens his case to that of State v. Fowler, 285 NC 90, 203 SE 2d 803 (1974), a case now before this Court on Writ of Certiorari, and in doing so, he incorporates Petitioner Fowler's arguments by reference. The State in similar fashion requests that the Respondent's brief in State v. Fowler, supra, be incorporated here. We wish also to incorporate the State's arguments in State v. Woodson and Waxton, 287 NC 578, 215 SE 2d 607 (1975), now also before this Court on the identical question. It is our position that the death penalty as mandated by the North Carolina General Statutes does not violate the provisions of the Eighth Amendment to the Constitution of the United States and certiorari should not be granted in this case.

As further reason for denying the writ here, it should be emphasized that the facts in this case are substantially different from those in State v. Fowler, supra. Here, the evidence tends to show a senseless killing for no reason other than petitioner's violent nature. Not only were the killer and victim unacquainted, but also there is evidence that the conversation between them up to the time of the shooting was relatively friendly. In Fowler,

the killer and victim had known each other, the two had been involved in a previous encounter on the evening of the crime and sharp words were exchanged between the two just prior to the shooting. This difference in the factual situation forecloses petitioner's assertion that the petition should be granted in this case because it is similar to State v. Fowler, supra. As noted above, the killing in this case and the manner in which it was performed form a good case for mandatory punishment. It is certainly not cruel and unusual to punish petitioner for his vicious acts.

CONCLUSION

The respondent respectfully urges this Honorable Court to dismiss this petition for Writ of Certiorari as the decision of the North Carolina Supreme Court is not repugnant to the Eighth and Fourteenth Amendments to the United States Constitution.

Respectfully submitted this the 6th day of March, 1976.

RUFUS L. EDMISTEN
Attorney General
State of North Carolina

Edwin M. Speas, Jr.
Special Deputy Attorney General

Elizabeth Cochrane Bunting
Associate Attorney General

IN THE

SUPREME COURT OF THE

UNITED STATES OF AMERICA

ROBERT L. GRIFFIN	)	
	)	
v.	)	Proof of Service
	)	
STATE OF NORTH CAROLINA	)	

I, Elizabeth C. Bunting, Associate Attorney General, North Carolina Department of Justice, certify that I have this day served a copy of the attached Response to Petition for Writ of Certiorari upon the attorney for petitioner herein, Robert L. Griffin, by placing same in the United States mail, postage prepaid, addressed to:

William J. Morgan
Attorney at Law
P. O. Drawer AE
Jacksonville, North Carolina 28540

This the 15 day of March, 1976.

Elizabeth C. Bunting
Elizabeth C. Bunting
Associate Attorney General